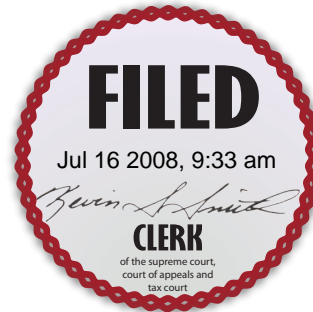


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DEMITRIUS WEEMS,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 48A02-0712-CV-1012
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE MADISON SUPERIOR COURT NO. 3
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0706-MI-577

July 16, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Demetrius Weems (Weems), appeals the trial court's Order, denying Weems' Petition for Post-Conviction Relief and granting the Motion for Summary Disposition filed by the State through the Indiana Parole Board.

Affirmed.

ISSUE

Weems raises one issue on appeal, which we restate as follows: Whether the trial court properly denied his petition for post-conviction relief.

FACTS AND PROCEDURAL HISTORY

On December 3, 2006, Weems was placed on parole status for his conviction of possession of cocaine, as a Class B felony. The Parole Board imposed the special stipulation that Weems attend, participate, and successfully complete the Marion County Re-Entry Court Program on December 3, 2006. On December 1, 2006, Weems absconded from the supervision of the Re-Entry Court. He was arrested on February 23, 2007. On March 13, 2007, Weems' parole agent completed a parole violation report and recommended that a warrant be issued and his parole be revoked. A parole warrant was issued on March 22, 2007 and subsequently served on March 30, 2007. Weems pled guilty to the parole violation of termination from Re-Entry Court and signed a waiver, waiving his right to a preliminary hearing. On May 17, 2007, the Parole Board revoked Weems' parole.

On June 14, 2007, Weems filed a Verified Petition for Writ of *Habeas Corpus*, alleging he was illegally detained by the Indiana State Parole Board for a violation of parole.

Specifically, he maintained that he was being illegally detained because the Parole Board had failed to hold a revocation hearing within the sixty-day time frame stipulated by Ind. Code § 11-13-3-10(a)(1) and that he had not waived his right to a preliminary hearing pursuant to I.C. § 11-13-3-9. The State replied by filing a Motion for Summary Disposition with a Memorandum in Support, denying Weems' allegations. On July 24, 2007, the trial court issued its Findings, Conclusions, and Order characterizing Weems' petition as a petition for post-conviction relief and finding for the State on all issues. On August 9, 2007, Weems filed a motion for reconsideration, which the trial court denied on the same date.

Weems now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Weems contends that the trial court erred by treating his Petition for Writ of *Habeas Corpus* as a Petition for Post-Conviction Relief and summarily granting the State's Motion for Summary Disposition. Additionally, he asserts that he was denied a preliminary hearing and the assistance of a public defender.

I. Standard of Review

Post-conviction hearings do not afford defendants the opportunity for a "super appeal." *Wright v. State*, 881 N.E.2d 1018, 1022 (Ind. Ct. App. 2008), *reh'g denied*. The petitioner has the burden of establishing the grounds for post-conviction relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). Because Weems is appealing from a negative judgment, to the extent his appeal turns on factual issues, he must provide evidence that as a whole unerringly and unmistakably leads us to believe that there is

no way within the law that a post-conviction court could have denied his post-conviction relief petition. *Wright*, 881 N.E.2d at 1022. It is only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion, that its decision will be disturbed as contrary to law. *Id.*

II. *Characterization as Petition for Post-Conviction Relief*

First, Weems contests the trial court's characterization of his Petition for Writ of *Habeas Corpus* as a Petition for Post-Conviction Relief. Indiana Post-Conviction Relief Rule 1(c) provides that the rules do not suspend the writ of *habeas corpus*, but if a petitioner applies for a writ of *habeas corpus* attacking the validity of a conviction or sentence the trial court shall treat it as a petition for relief under the Post-Conviction Relief Rules. *See also Parker v. State*, 822 N.E.2d 285, 286 (Ind. Ct. App. 2005). Additionally, pursuant to Indiana Post-Conviction Rule 1(a)(5) a petitioner can file a petition for post-conviction relief claiming that "his sentence has expired, his probation, parole or conditional release [has been] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint." Because Weems is challenging the revocation of his parole, his action was appropriately treated by the trial court as a petition for post-conviction relief.

III. *Motion for Summary Disposition*

Next, Weems alleges that the trial court erred in granting the State's Motion for Summary Disposition. An action for post-conviction relief may be decided by summary disposition on the pleadings "when it appears from the pleadings, depositions, answers to interrogatories, admissions, stipulations of fact, and any affidavits submitted that there is no

genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” P-C.R. 1§4(9). Thus, the necessity of an evidentiary hearing is avoided when the pleadings present only issues of law. *Diaz v. State*, 753 N.E.2d 724, 727 (Ind. Ct. App. 2001), *trans. denied*.

Here, Weems’ pleading before the trial court maintained that he was being illegally detained because the Parole Board had failed to hold a revocation hearing within the sixty-day time frame stipulated by I.C. § 11-13-3-10(a)(1) and that he had not waived his right to a preliminary hearing pursuant to I.C. § 11-13-3-9. With respect to Weems’ right to a preliminary hearing, we note that on March 30, 2007 Weems waived this right.

Secondly, regarding Weems’ first claim, the State, in its Motion for Summary Disposition, attached documents disproving Weems’ contention. I.C. § 11-13-3-10(a)(1) provides that

[a] parolee who is confined due to an alleged violation of parole shall be afforded a parole revocation hearing within sixty (60) days after the parolee is made available to the department by a jail or state correctional facility, if:

(A) there has been a final determination of any criminal charges against the parolee; or

(B) there has been a final resolution of any other detainers filed by any other jurisdiction against the parolee.

The State’s evidence reflects that Weems absconded from the supervision of the Marion County Re-Entry Court on December 1, 2006. He was arrested on February 23, 2007 and held by the Re-Entry Court. As of March 13, 2007, Weems was in custody of the Marion County Jail, awaiting final approval of the Parole Board for termination from the Re-Entry

Court. A parole violation was issued on March 22, 2007 and served on March 30, 2007. As such, Weems was not confined on a parole violation until March 30, 2007 when the warrant was served. Weems' parole revocation hearing was held on May 17, 2007, which was forty-eight days from the date the parole violation warrant was served. Thus, based on the evidence before it, the trial court properly granted the State's Motion for Summary Disposition.

IV. Remaining Claims

On appeal, Weems now argues for the first time that he was not subject to the special condition of parole requiring participation in the Marion County Re-Entry Program. As a party cannot raise an argument for the first time on appeal, the issue is waived. *See* P-C.R. 1 §8. Furthermore, we note that Weems failed to make a cogent argument with respect to his claim that he lacked the aid of a State Public Defender. A single sentence claim does not constitute the type of well-developed reasoning as envisioned under Ind. Appellate Rule 46(A)(8). Thus, we conclude Weems waived this argument for our review.

CONCLUSION

Based on the foregoing, we hold that the trial court properly denied Weems' petition for post-conviction relief.

Affirmed.

BAKER, C.J., and ROBB, J., concur.